

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-3
SUBSTANTIVE REGULATIONS**

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560-7-3-.13 Consolidated Returns.

(1) Filing of Consolidated Returns.

(a) **Permission Required to File Consolidated.** Where a group of affiliated corporations file a consolidated income tax return for Federal income tax purposes, the members of this affiliated group may, pursuant to paragraph (2) of this regulation, petition the Commissioner for permission to file a consolidated return for Georgia income tax purposes.

(b) **Treatment of Corporations which were Previously Required to File.** Any Georgia consolidated group, which was previously required to file a consolidated return for taxable years beginning before January 1, 2005, must request permission pursuant to this regulation. However, if such group requested permission for a taxable year beginning on or after January 1, 2002, they are not required to request permission again.

(c) **When Required to Clearly and Equitably Reflect Income Attributable to Georgia.** The Commissioner may require mem-

bers of a group of affiliated corporations that file a consolidated return for Federal income tax purposes to file a consolidated return for Georgia income tax purposes, but only when the Commissioner reasonably determines that:

1. The filing of separate Georgia income tax returns would not clearly and equitably reflect the income of the corporations attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia; and
2. The filing of a consolidated return would clearly and equitably reflect the income of the corporations attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia.

(2) Application for Permission to File a Consolidated Return.

(a) **Time for Filing Application.** Corporations that wish to request permission from the Commissioner to file a consolidated return for the purpose of determining their Georgia income tax liability must do so by filing “Application for Permission to File Consolidated Georgia Income Tax Return,” Revenue Form IT-CONSOL. Such application shall be filed with the Commissioner at least seventy-five (75) days prior to the due date of the Georgia return (including extensions) or at least seventy-five (75) days prior to the filing of the return, whichever occurs first, for the tax year for which permission to file on a consolidated basis is requested. Failure to request permission by such time will result in the filing of separate income tax returns for the applicable year. Such application must designate one member of the affiliated group which is authorized to receive the notice of approval or denial or the notices referred to in paragraph (3) on behalf of the en-

tire group, and to execute any consent referred to in subparagraph (f) of paragraph (3) on behalf of the entire group, and an address to which any such notices or consents may be sent.

(b) **Composition of the Georgia Consolidated Group.** A Georgia consolidated group shall, for each year a consolidated return is filed, consist of all of the members of an affiliated group of corporations that file a consolidated return for Federal income tax purposes that are subject to Georgia income tax under Chapter 7 of Title 48 of the O.C.G.A.; provided, however, that corporations that are immune from Georgia income tax under Federal law shall not be included in the proposed Georgia consolidated group.

(3) Standard for Allowing Consolidated Returns; Tentative Permission; Revocation of Permission.

(a) **Clearly and Equitably Reflect Income Attributable to Georgia.** Permission to file a Georgia consolidated return shall be granted by the Commissioner when the filing of such return will clearly and equitably reflect the income of the corporations attributable to property owned, business done, and income derived from sources by the members of the affiliated group in Georgia. A Georgia consolidated return will generally be deemed by the Commissioner to clearly and equitably reflect the income of the corporations included in the return attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia except as enumerated in subparagraphs (b) through (e) below.

(b) **Expenses Attributable to Related Members Not Included in Georgia Consolidated Group.** If any member of a group of corporations filing a Georgia consolidated return has interest expense attributable to indebtedness incurred in connection with an

ownership interest in one or more related members which are not included in the Georgia consolidated return, or other deductions from income related to an ownership interest in one or more related members which are not included in the Georgia consolidated return, the Commissioner may, as a condition to the granting of permission to file a consolidated Georgia return, require that such interest or other deductions be excluded in calculating the Georgia income of such member for purposes of the Georgia consolidated return. For purposes of this regulation, the term “related member” shall mean the same as it is defined in O.C.G.A. § 48-7-28.3.

(c) Elimination of Members From Georgia Consolidated Group if Necessary to Clearly and Equitably Reflect Income Attributable to Georgia. If the Commissioner reasonably determines that the inclusion of one or more otherwise eligible corporations in a Georgia consolidated return will not clearly and equitably reflect the income of the consolidated group attributable to Georgia, the Commissioner may, as a condition to the granting of permission to file a consolidated Georgia return by the other members of a Georgia consolidated group, require such corporations to file separate Georgia income tax returns or may require adjustment to the consolidated filing so that the consolidated return will clearly and equitably reflect the income of the Georgia consolidated group attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia.

(d) Other Adjustments Necessary to Clearly and Equitably Reflect Income Attributable to Georgia. The Commissioner may, as a condition to granting of permission to file a consolidated Georgia income tax return, require such other adjustments as he or she may reasonably determine are necessary in order for the consolidated return to clearly and equitably reflect the income of the Georgia consolidated group attributable to property owned in

Georgia, business done in Georgia, and income derived from sources within Georgia.

(e) **Denial of Request by Commissioner.** If, upon review of an application for permission to file a consolidated return, the Commissioner reasonably determines that the filing of a consolidated Georgia return as requested by an otherwise eligible affiliated group will not clearly and equitably reflect the income of the group attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia, and distortion cannot reasonably be eliminated by means of one or more of the adjustments authorized in this regulation, then the Commissioner may deny the application and all of the corporations shall be required to file separate Georgia income tax returns for such year. The Commissioner may also deny the application if the corporations fail to provide any information requested by the Commissioner that he has reasonably determined is needed to decide if such application should be granted, and in such event all of the corporations shall be required to file separate Georgia income tax returns for such year.

(f) **Tentative Permission.** If an application for permission to file a consolidated return is timely filed pursuant to paragraph (2), the Commissioner shall exercise his or her best efforts to fully consider such application and to either grant or deny it prior to the return's due date (including extensions), but any failure by the Commissioner to act on such application by such date shall not be deemed as a grant thereof or permit the filing of a consolidated return by the affiliated group. If, as of fifteen (15) days before the return's due date (including extensions), the Commissioner has requested but not yet received from the affiliated group any information that the Commissioner has reasonably determined is needed to decide if such application should be granted, or if the affiliated

group otherwise has not received a response to its timely filed application, the affiliated group may request and shall be entitled to receive tentative permission from the Commissioner to file a consolidated return, which permission may be conditioned on the affiliated group's agreement to provide any such requested information by a date certain acceptable to the Commissioner. If tentative permission is granted pending the receipt of information, the Commissioner shall review and take final action on the application, using the standards and criteria set forth in subparagraphs (a) through (e), within seventy-five (75) days after receipt of such information. In all other circumstances where tentative permission has been granted, the Commissioner shall take such final action no later than four months from the Commissioner's receipt of the first such consolidated return. If tentative permission has been granted pursuant to this subparagraph the affiliated group may by written consent allow the Commissioner additional time to complete his or her review and take final action. The Commissioner's tentative permission shall be revoked retroactively if the application is denied, and each member of the affiliated group shall, not later than sixty (60) days after the date of the Commissioner's written notice of denial, file an amended Georgia income tax return on a separate company basis for the affected tax period or periods and pay any additional tax and interest attributable thereto. If the Commissioner determines that any distortion can reasonably be eliminated by means of one or more adjustments to the consolidated return, including but not limited to the elimination of corporations from the consolidated group, the Commissioner may, in lieu of revoking his or her tentative permission, modify it retroactively by written notice specifying the adjustments that are required. Each member of the affiliated group shall, not later than sixty (60) days after the date of the Commissioner's written notice of modification, file either an amended consolidated Georgia income tax return or a separate company return for the affected tax period or periods that is

consistent with the adjustments mandated by the Commissioner and pay any additional tax and interest attributable thereto. If the Commissioner has tentatively approved an application but does not issue a written notice of denial, a written notice of approval, or a written notice of modification within the period prescribed in this subparagraph, such application shall be deemed to have been approved.

(g) **Prospective Revocation of Permission.** If the Commissioner determines at any time, using the standards and criteria set forth in subparagraphs (a) through (e), that the filing of a consolidated Georgia income tax return, for which permission previously was granted, will not clearly and equitably reflect the income of the affiliated group attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia, the Commissioner may revoke such permission prospectively for all tax periods beginning on or after the date of the Commissioner's written notice of revocation to the affiliated group. In lieu of revocation, the Commissioner may direct changes in the consolidated group or the methodology of filing the consolidated return as set forth in subparagraphs (a) through (d). This subparagraph shall also apply in any case in which an application was deemed to have been approved by the Commissioner pursuant to subparagraph (f).

(h) **Retroactive Revocation of Permission in Case of Material Omissions or Misstatements.** If the Commissioner grants permission to file a consolidated Georgia return but later determines that the application upon which such permission was based contained material omissions or misstatements of fact, whether intentional or otherwise, the Commissioner may revoke his or her permission retroactively by sending written notice of revocation to the affiliated group, recalculate the tax liabilities of each member

of the affiliated group on a separate company basis for all affected tax periods, and within the applicable limitations period assess any additional tax, interest, and penalties attributable thereto. This subparagraph shall also apply in any case in which an application was deemed to have been approved by the Commissioner pursuant to subparagraph (f).

(4) Tax Years for Which Consolidated Returns Must Be Filed once Permission Is Granted. If a Georgia consolidated group has received permission from the Commissioner to file a consolidated Georgia income tax return for any year, consolidated Georgia returns must be filed for all future tax years, except in the following circumstances:

(a) The Commissioner either revokes his or her prior permission to file a consolidated Georgia income tax return pursuant to paragraph (3) of this regulation or grants permission to cease filing such a return; or

(b) The affiliated group of corporations ceases to file a consolidated return for federal income tax purposes, whereupon the corporations must also cease filing a consolidated return for Georgia income tax purposes.

(5) Separate Company Computation of Taxable Income or Loss. Corporations that file a consolidated Georgia income tax return are required to consolidate separate company income or loss on a post-apportionment basis. This shall be accomplished by way of the following process:

(a) Each corporation within the Georgia consolidated group will prepare a separate company Georgia Form 600.

(b) The corporation will reflect its name and FEI number in the heading of the return.

(c) The corporation will begin on line 1 of Schedule 1 with its separate company federal taxable income or loss and will make the appropriate additions to or subtractions from taxable income on lines 2 and 4 of that Schedule. For purposes of this regulation, the separate company federal taxable income or loss shall be the taxable income or loss of the member included in the consolidated federal return but without the modifications listed in Internal Revenue Service Regulation 1.1502-12.

(d) If the corporation qualifies to apportion, it will complete Schedule 6 and Schedule 7 to determine the amount of separate company Georgia taxable income or loss to be reflected on line 7 of Schedule 1.

(e) If the corporation has a Georgia separate return limitation year loss, or “GSRLY” (see subparagraph (8)(e) of this regulation), that loss would be reflected on either line 6 of Schedule 1, or line 8 of Schedule 7 of Form 600.

(f) Intercompany transactions are not eliminated in this process of determining a corporation’s separate company Georgia taxable income or loss. However, the Commissioner reserves the right to examine intercompany transactions, and to make appropriate adjustments, to ensure that taxpayers clearly reflect income attributable to controlled transactions or to prevent the avoidance of taxes with respect to such transactions.

(g) The separate company income or loss of each corporation in the Georgia consolidated group, as reflected on the separate company Form 600’s, would then be consolidated on a group Form 600

and reflected on line 5 of Schedule 1 of that Form.

(h) Any consolidated Georgia net operating loss would be deducted on Schedule 1 line 6 to arrive at the consolidated group's Georgia taxable income or loss on line 7, and the group's income tax, if appropriate, on line 8.

(i) Schedule 3 of the Group Form 600 would be completed to reflect a computation of tax due or overpayment for the group.

(6) Separate Company Computation of Net Worth Tax. Corporations that file a consolidated Georgia income tax return are required to report and pay the net worth tax on a separate company basis.

(7) Earning, Claiming and Assigning of Tax Credits. The jobs tax credit, the investment tax credit, and any other tax credits which may be claimed against the Georgia corporate income tax must be calculated and claimed on a separate company basis. When the code specifies that the amount of the credit taken in any one taxable year be limited to an amount not greater than 50 percent (or another percentage) of the taxpayer's state income tax liability, such limit shall be computed on a separate company basis. For credit limitation purposes, net operating loss carryovers must be accounted for on a separate company basis. Assignment of Georgia income tax credits under the terms of O.C.G.A. § 48-7-42 is available within a consolidated Georgia return. In the event tentative permission is granted pursuant to subparagraph (3)(f), the members of the consolidated group may make a new assignment or may change such assignment provided such new assignment or change is made on the returns which are required to be filed not later than sixty (60) days after the date of the Commissioner's written notice of denial or modification.

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Credit Example:

<u>Numbers Per Separate Com- pany Calculation</u>	<u>Georgia Parent Co</u>	<u>Sub Co A</u>	<u>Sub Co B</u>	<u>Sub Co C</u>
Georgia Taxable Income	50,000	(16,000)	140,000	60,000
Georgia Tax Liabil- ity (6%)	3,000	-	8,400	3,600
<u>Georgia Income Tax Credits Gener- ated in Current Year:</u>				
Retraining Tax Credit (limited to 50% of income tax liability)	-	6,000	-	2,500
<u>Georgia Tax Credits Carried Forward:</u>				
Investment Tax Credit (limited to 50% of income tax liability)	7,250	-	-	-
<u>Retraining Credits Assigned: *</u>				
From Sub Co A	1,500	(6,000)	4,500	-
From Sub Co C	-	-	-	-
Retraining Credit Limitation	1,500	-	4,200	1,800
Investment Credit Limitation	1,500	-		
Total Tax Credits Utilized in Current Tax Year	3,000	-	4,200	1,800
Remaining Tax Liability**	-	-	4,200	1,800
<u>Tax Credits to be Carried Forward:</u>				
Investment Tax Credit	5,750	-	-	-

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Retraining Tax Credit	-	-	300	700
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Consolidated Tax Calculation:**Taxable Income:**

Georgia Parent	50,000
Sub Co A	(16,000)
Sub Co B	140,000
Sub Co C	<u>60,000</u>
Consolidated Taxable Income	<u><u>234,000</u></u>

Tax Calculation:

Consolidated Taxable Income	234,000
Georgia Tax Liability @ 6%	14,040
Combined Tax Credits Utilized***	<u>9,000</u>
Balance of Georgia Tax	<u><u>5,040</u></u>

* Credits assignment must be made on the separate company tax returns, with a detailed summary provided on a schedule attached to the consolidated tax return.

** The remaining tax liability is due to the limitations applied to the credits. Georgia Parent Co was able to utilize its carryforward Investment Tax Credit up to 50% of its separate company tax liability and also to utilize the assigned Retraining Tax Credit from Sub Co A for the remaining 50% of its tax liability. The remaining balance of the Retraining Tax credit generated by Sub Co A is then assigned to Sub Co B, with the unused portion available to Sub Co B as a carryforward credit. Sub Co C is able to utilize its Retraining Tax Credit up to 50% of its income tax liability, with the remaining balance kept as a carryforward credit against future liability. Please note that credits may only be assigned in the year generated and assignment must be made by the due date of the return (including extensions), thus carryforward credits are not assignable.

***In no case may the combined tax credits utilized offset more

than 100% of the consolidated tax liability. Such excess shall be carried forward by the appropriate separate companies provided it is otherwise eligible for carryforward.

(8) Consolidated Return Net Operating Loss Deduction. A consolidated Georgia net operating loss carryforward or carryback shall be allowed as a deduction on the Georgia consolidated return of an affiliated group under the following rules:

(a) The Georgia consolidated net operating loss for a taxable year shall include the separate company federal taxable income or loss of each member corporation, with the adjustments provided for in subsection (b) of O.C.G.A. § 48-7-21 and O.C.G.A. § 48-7-28.2, and allocated and apportioned as provided in O.C.G.A. § 48-7-31. In calculating the separate company income or loss of each member corporation, no deduction will be taken for either federal or Georgia net operating losses from other years;

(b) “Georgia separate return year” as used in this regulation means a tax year of a corporation for which it files a separate return with Georgia or for which it joins in the filing of a consolidated Georgia return by another group;

(c) “Georgia separate return limitation year”, or “GSRLY”, as used in this regulation means any Georgia separate return year of a corporation or of a predecessor of a corporation;

(d) A consolidated Georgia Net Operating Loss deduction shall consist of any consolidated net operating loss (per subparagraph (a)) of the group that is carried forward or carried back to a consolidated year, plus any net operating loss incurred by members of the group in Georgia separate return years which may be carried over to that year. However, a net operating loss incurred by a

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member corporation in a Georgia separate return limitation year shall be subject to the limitation set forth in subparagraph (e);

(e) Net operating losses carried to a consolidated return year from a Georgia separate return limitation year (GSRLY) may be used to reduce the group's income only to the extent of the income contributed by the GSRLY member. This computation shall be performed first and then any consolidated loss of the group would be applied against any remaining income of the group. (See Example 1)

Example 1

Company	A	B	C	Consolidated Total
12/31/01	(75,000) (1)	25,000	10,000	Separate Company Returns Filed
12/31/02	(50,000)	20,000	15,000	Loss (15,000) (2)
12/31/03	50,000	20,000	15,000	85,000
Less:NOL(GSRLY)	(50,000) (3)			
	-0-	20,000	15,000	Profit after GSRLY 35,000 (4)
Consolidated NOL from 12/31/02				Carryforward (15,000) (5)
Consolidated Total Profit 12/31/03				20,000 (6)
Total GSRLY Carryforward Company "A"	(25,000) (7)			

Explanation For Example 1:

1. The year 12/31/01 is a Georgia separate return year, and the (\$75,000) loss of company A is limited in subsequent years to the income of company A. The years 12/31/02 and 12/31/03 are consolidated post apportionment years.
2. The 12/31/02 tax year reflects a (\$15,000) consolidated loss which may be carried forward.

3. In 12/31/03, the first consolidated profitable year, any GSRLY loss applies first. Therefore, (\$50,000) of company A's loss from 12/31/01 is used against company A's income in 12/31/03.
4. The reduced income of the group for 12/31/03 is \$35,000.
5. The consolidated loss of (\$15,000) from 12/31/02 which was carried forward may now be deducted.
6. The reduced taxable income is \$20,000.
7. Company A has a remaining GSRLY loss of \$25,000 which may be carried forward;

(f) If a Georgia consolidated net operating loss can carry forward to a Georgia separate return year of a corporation which was a member of an affiliated group in the year in which the loss arose, then the portion of the net operating loss attributable to such corporation shall be apportioned to such corporation under the provisions of subparagraph (g) and shall be a net operating loss carry-over to such Georgia separate return year. However, such portions shall not be included in the consolidated net operating loss carry-overs to the equivalent consolidated return year;

(g) The portion of a Georgia consolidated net operating loss attributable to a member of a group is the consolidated net operating loss multiplied by a fraction, the numerator of which is the separate net operating loss of such corporation, and the denominator of which is the sum of the separate net operating losses of all members of the group in the year in which such losses were incurred. See example 2. The separate net operating loss of such corporation

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and of each member as is mentioned in this subparagraph shall be computed as follows:

1. The separate net operating loss for the taxable year that this regulation is first applicable to and each year thereafter shall be computed on a post apportionment basis as is provided in paragraph (5).

2. The separate net operating loss for each taxable year prior to the taxable year that this regulation is first applicable to shall be computed as follows:

(i) Income or loss subject to apportionment pursuant to O.C.G.A. §48-7-31(d). When the consolidated group consolidated its income or loss subject to apportionment and then applied the consolidated group's apportionment percentage to the income or loss subject to apportionment (pre-apportionment basis), the portion of the separate net operating loss, attributable to income or loss subject to apportionment, of each separate corporation shall be computed by applying the consolidated group's apportionment percentage to the separate corporation's income or loss subject to apportionment.

(ii) Income or loss subject to allocation pursuant to O.C.G.A. §48-7-31(c). The portion of the separate net operating loss, attributable to income or loss subject to allocation, of each separate corporation shall be equal to its separate corporation income or loss subject to allocation.

Example 2

Company	A	B	C	Total
12/31/02 SNTI* (SNOL**)	(5,000)	2,000	(1,000)	(4,000)
Gains \$2,000	-/-		-/-	

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Losses (\$6,000)	(6,000)		(6,000)	
Net Loss (4,000)	= .8333	-0-	= .1667	
	X (4,000)		X (4,000)	
NOL	(\$3,333)	-0-	(\$667)	(4,000)

*SNTI=Separate Net Taxable Income

**SNOL=Separate Net Operating Loss

Explanation For Example 2, Member Leaving Group:

Corporation A, B and C file a consolidated return in 12/31/02. On 1/1/03 Corporation C is sold to Corporation D. This example above computes Corporation C's loss carryforward to its new consolidated group and the loss carryforward of the original group, Corporation A&B. Corporation C has a loss carryforward of (\$667) and the remaining group (Corporation A&B) has a loss carryforward of (\$3,333);

(h) If a corporation ceases to be a member during a consolidated return year, any Georgia consolidated net operating loss carryover from a prior tax year must first be carried to such Georgia consolidated return year even though all or a portion of the Georgia consolidated net operating loss giving rise to the carryover is attributable to the corporation which ceases to be a member. To the extent not absorbed in such consolidated return year, the portion of the consolidated net operating loss attributable to the corporation ceasing to be a member shall then be carried to the corporation's first Georgia separate return year;

(i) The provisions of § 108 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal

Revenue Code § 108 provisions shall be applied in the same manner as provided in the Internal Revenue Code and related regulations (including those regulations relating to how to apply Internal Revenue Code § 108 to consolidated returns). The reduction in the Georgia net operating losses shall be determined by applying the Georgia apportionment percentage for the year of the discharge to the amount of the Internal Revenue Code § 108 net operating loss reduction determined pursuant to this regulation. A determination under the federal consolidated regulations that the separate entity has an amount of discharge of indebtedness income and or is required to reduce tax attributes shall also apply for Georgia purposes.

2. The reduction of tax attributes provided in paragraph (a)(4) of Internal Revenue Service Regulation § 1.1502-28 shall be applied in the same manner as such regulation requires except that the excluded discharge of indebtedness income not applied to reduce the tax attributes attributable to the member shall be used to reduce the Georgia consolidated tax attributes instead of the federal consolidated tax attributes.

3. Any elections, with respect to the order of the tax attribute reductions, made for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations, shall also apply for Georgia purposes.

(j) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 381, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations (including those regulations relating to how to apply Internal Revenue Code § 381 to consolidated returns).

(k) The provisions of § 382 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 382 limitation shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. Such limitation shall be computed on a separate entity basis even when a consolidated federal income tax return is filed. Except as otherwise provided in this regulation, the Internal Revenue Service Regulations regarding how to apply Internal Revenue Code § 382 when a consolidated return is filed and paragraph (f) of Internal Revenue Service Regulation § 1.382-8 shall not apply for Georgia purposes.

2. A determination that an ownership change has occurred for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) shall apply for Georgia purposes.

3. Adjustments to prevent duplication of value contained in the Internal Revenue Code § 382 regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) apply for Georgia purposes. However, the election to restore value provided in paragraph (c) of Internal Revenue Service Regulation § 1.382-8 shall not be available.

4. Whenever an ownership change occurs, an Internal Revenue Code § 382 limitation will apply to all Georgia pre-change losses that are carried over to a post-change year. “Pre-change years” end on or before the date of an ownership change, while “post-change years” end after the date of an ownership change. In a post-change

year, the limitation on the use of any pre-change year Georgia net operating losses shall be determined by applying that post-change year's apportionment percentage to the Internal Revenue Code § 382 limitation for that post-change year determined pursuant to this regulation.

5. The Internal Revenue Code § 382 limitation does not reduce the total amount of pre-change Georgia net operating losses available for carry forward but, similar to federal treatment, restricts the amount of net operating losses from pre-change years that can be applied to the income in a post-change year.

6. If there is any unused Internal Revenue Code § 382 limitation for Georgia purposes in a post-change year, the following year's limitation shall be increased by the excess amounts determined for Georgia tax purposes in a manner similar to Internal Revenue Code § 382(b)(2).

7. In the event the Internal Revenue Code § 382 limitation and the GSRLY limitation both apply to a net operating loss, the net operating loss shall be subject to both the GSRLY limitation and the Internal Revenue Code § 382 limitation. For example, a taxpayer has a net operating loss of \$1000. The Internal Revenue Code § 382 limitation only allows \$500 of the loss to be used. The GSRLY limitation only allows \$200 of the loss to be used. \$200 of the loss is allowed to be used. Conversely, a taxpayer has a net operating loss of \$1000. The Internal Revenue Code § 382 limitation only allows \$200 of the loss to be used. The GSRLY limitation only allows \$500 of the loss to be used. \$200 of the loss is allowed to be used.

(l) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 384, as they apply to Georgia net

operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. The adjustment for such Internal Revenue Code Section shall be determined on a separate entity basis. The limitation on offsetting losses against any recognized built in gains which are allocated to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains. The limitation on offsetting losses against any recognized gains which are apportioned to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains multiplied by the apportionment percentage for the recognition period taxable year.

(m) For purposes of subparagraphs (8)(i) through (8)(l), the Georgia net operating loss of each separate member for the applicable year shall be computed as follows:

1. If the net operating loss is carried to a consolidated return year from a Georgia separate return limitation year (GSRLY), the Georgia net operating loss shall be the separate Georgia net operating loss of the member for the applicable year.

2. If the net operating loss is carried to a consolidated return year from a year other than a Georgia separate return limitation year (GSRLY), the portion of a Georgia consolidated net operating loss attributable to a member of a group shall be computed in the same manner as provided in subparagraph (g) of this paragraph.

(n) A Georgia consolidated net operating loss may not be carried back to a Georgia separate return limitation year.

(o) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback under paragraph

(10) of subsection (b) of O.C.G.A. § 48-7-21, the taxpayer may file an amended return within the time period prescribed by O.C.G.A. § 48-7-21 or alternatively may file an “application for a tentative carryback adjustment of the taxes” within a period of twelve (12) months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund for purposes of O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the application and examination. The Commissioner may disallow, without further action, any application which contains errors of computation which he or she deems cannot be corrected within such ninety (90) day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be without interest. If the Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback adjustment, he or she may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of a return.

(p) Complete schedules must be submitted for all net operating losses carried forward to or from consolidated returns. Schedules must contain information to substantiate which corporations incurred net operating losses and the age of the net operating losses.

(9) Transition Rules for Net Operating Loss Carryforward.

(a) Except as provided in subparagraphs (9)(b) and (9)(c), any corporation which has received permission to join in the filing of a Georgia consolidated income tax return and which has joined in the filing of a Georgia consolidated income tax return, in the first taxable year beginning prior to January 1, 2002, will be eligible to carry forward to a consolidated return year the net operating loss shown on the returns, filed and accepted by the Department, without being subject to the GSRLY limitations as described in subparagraph (8)(e).

(b) A corporation which filed as a party to a Georgia consolidated return in the first taxable year beginning prior to January 1, 2002 and which will not be included in the Georgia consolidated return in the first taxable year beginning on or after January 1, 2002 shall be treated as ceasing to be a member of that group for the first taxable year beginning prior to January 1, 2002 as described at subparagraph (8)(h). The separate company Georgia net operating loss for the corporation, if any, will then be determined according to subparagraphs (8)(f) and (8)(g).

(c) The separate company net operating loss carryforward for a corporation coming into the group, that did not join in the filing of the Georgia consolidated return for the group in the first taxable year beginning prior to January 1, 2002 or which has joined in the filing of a Georgia consolidated income tax return of another group in the first taxable year beginning prior to January 1, 2002, shall be treated pursuant to the terms of subparagraph (8)(e). A corporation which has joined in the filing of a Georgia consolidated income tax return of another group in the first taxable year beginning prior to January 1, 2002 shall be treated as ceasing to be member of that

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group for the first taxable year beginning prior to January 1, 2002 as described at subparagraph (8)(h). The separate company Georgia net operating loss for the corporation, if any, will then be determined according to subparagraphs (8)(f) and (8)(g).

(10) **Effective Date.** This regulation will apply to taxable years beginning on or after January 1, 2005. Taxable years beginning on or after January 1, 2002 and before January 1, 2005 will be governed by the prior provisions of this regulation. Taxable years beginning before January 1, 2002 will be governed by Regulation 560-7-3-.06(4) as it was in effect at that time.

Authority O.C.G.A. §§ 48-2-12 and 48-7-21.